IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 751 of 2005

Between:

1 A.V. Pramila Bai, W/o. Late Narsimha Rao, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.
2 A.V. Pramod Kumar, S/o. Late Narsimha Rao, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.
3 A.V. Uday Kumar, S/o. Narsimha Rao, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.
4 A.V.Ashok Kumar, S/o. Narsimha Rao, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.
5 A.V. Vijayanthimala, W/o. V. Ashok Kumar, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.
6 A.V. Kishore Kumar, S/o. Narsimha Rao, R/o. 3-4-529/4/4; 529/4/4/A, 529/4/4/4/B Narayanguda, Nampalli Mandal, Hyderabad.

PETITIONERS

AND

1 The Branch Manager, AP State Financial Corporation, B-2A Industrial Estate, GNT Road, A.K.Nagar, Nellore-524 004.
2 The Managing Director, AP State Financial Corporation, Chirag Ali Lane, Hyderabad.
3 Navya Gowthami Hatcheries P. Ltd., rep. by its Managing Partner Sri S.V. Srinivasulu Reddy, Wagarru V, Vakadu Mandal, Nellore District.

RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein, the High Court may be pleased to call for records and documents pertaining to the loan A/c No.65-8501 availed by 3rd respondent based on the alleged deposit of title deeds in respect of house bearing No.3-4-529/4/4, 529/4/4/A, 529/4/4/B Narayanguda, Nampalli Mandal Hyderabad and issue a writ, order or direction, more particularly one in the nature of writ of

Mandamus declaring the action of the 1st respondent corporation in bringing the House property of the petitioners bearing House No.3-4-529/4/4, 529/4/4/A, 529/4A, 529/4/4/B to sale pursuant to the sale notification dt. 1.1.05 published in Enadu Newspaper and letter No. APSFC/MR & R/Zone-III/CRVK/04-05/3062 Dt. 15.12.2004 as illegal and without jurisdiction and consequently set-aside the said sale notification and letter insofar as the aforementioned house property of the petitioners is concerned.

Counsel for the Petitioners :MR.S.C.RANGAPPA

Counsel for the Respondents 1 and 2 : MS.Y.N.LOHITA (SC FOR AP FINANCE CORP)

The Court made the following:

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ORDER:

This is a writ petition filed by the petitioners under Article 226 of the Constitution by way of mandamus declaring the action of the 1st respondent Corporation in brining the house property of the petitioners bearing Nos.3-4-529/4/4; 529/4/4/A, 529/4/4B to sale pursuant to the notification dated 01-01-2005 as illegal and without jurisdiction and consequently set aside the sale notification insofar as it relates to the house property of the petitioners.

In the affidavit filed in support of the writ petition, it is mentioned that the petitioners are the absolute owners and possessors of the house bearing Nos.3-4-529/4/4; 529/4/4/A of Narayanaguda, Nampalli Mandal, Hyderabad after demise of their father on 04-9-1998. On 08-11-2004, the Deputy General Manager of the Respondent Corporation approached the petitioners and informed that M/s. Navya Gouthami Hatchers P Ltd., of Nellore District availed a loan of Rs.46,10,530/- from the Nellore Branch of Corporation and an amount of Rs.8,64,624/- is outstanding. He further informed that the petitioners' house was hypothecated with the 1st respondent besides the land and machinery of the unit. The concerned officers have shown the documents and from those documents, the petitioners observed that though their names have been incorporated in the documents, the photos affixed on the loan documents and the signatures of those documents do not relate to the petitioners. The age and other particulars of the petitioners are also different. The

petitioners replied to those officers that they neither mortgaged their property nor have anything to do with the loan transaction. While the matters stood thus, the 1st respondent issued a letter dated 15-12-2004 stating that the loanee did not pay the arrears. Therefore, the house which was hypothecated to the corporation is being sold for recovery of the dues of the third respondent. The petitioners got issued legal notice on 21-12-2004 to the 1st respondent denying their liability and the hypothecation of the house property etc., Despite the reply, the 1st respondent got a publication made in Eenadu News paper on 01-01-2005 calling for tenders for the sale of the house property of the petitioners. The petitioners have also got issued a public notice on 04-01-2005 that they are the absolute owners and possessors of the property and they have neither mortgaged nor given any guarantee and that the loan documents were forged and fabricated. Therefore, they filed this writ petition for the reliefs mentioned above.

The respondents 1 and 2 filed the Counter affidavit reiterating the allegations made in the legal notice and pleaded that the writ petition cannot be maintained. The petitioners filed a reply affidavit mentioning that when the petitioners are disputing the loan transaction and the mortgage of the schedule property, the 1st respondent cannot bring the said property for sale.

In the light of the contentions made by the respective parties and in the light of the assertion made by the petitioners that they are strangers to the transaction and they have nothing to do with the availment of the loan, this Court directed the 1st respondent to cause production of the file relating to the loan transaction. On verification of the loan documents, in the Court, an astonishing fact came to light from the record. The applications said to be given by the petitioners undertaking to mortgage the schedule property contained photographs of different persons which were duly attested by a Central Government Standing Counsel/Legal Practitioner and the signatures on those applications are also not tallying with the signatures of the petitioners contained in the writ file. Regarding the original title deed available with the Corporation, the petitioners contended that in order to borrow some amount from one Raghavendra Chowdary, they gave original title deed to him in the year 2000 and as the terms fixed by the said Raghavendra Chowdary were not acceptable to the petitioners, they did not go for any loan with him but the title deed given by them remained with the said Raghavendra Chowdary and he did not return

the said document to the petitioners. They suspected that the said Raghavendra Chowdary might have joined hands with somebody else for depositing of the said title deed in this loan transaction but when the petitioners wanted to ascertain, they could not trace the whereabouts of the said Raghavendra Chowdary but they gave a legal notice to the concerned Officials of the 1st respondent Corporation by marking a copy to the concerned police. During the last hearing date, when the learned counsel for the petitioners repeatedly ascertained that they are the strangers to the loan transaction, he was directed to bring the petitioners to this Court and they are present today. When I verified the loan file in the presence of both the counsel and the petitioners, it is noticed that in the bio-data form said to be given along with the title deed at the time of the alleged loan transaction, the photos of different persons were noticed on the bio-data forms of the petitioners said to be given by them and the signatures also prima facie did not tally when compared with the signatures available with the record of the writ petition including the vakalat. When the Counsel for the petitioners produced the petitioners before this Court, the learned counsel for the 1st respondent could not dispute their identity.

In the light of the above prima facie material, I am made to understand that some fraud might have been played on the 1st respondent Corporation at the time of obtaining the loan by impersonating the sureties and by forgering the signatures of such persons.

In the light of the above circumstances, I find sufficient force in the contention of the petitioners that unless the 1st respondent Corporation establishes that the petitioners voluntarily came forward to stand as sureties and at their instance, the equitable mortgage was created by way of deposit of title deeds the Corporation is not entitled to proceeding against the property of the petitioners.

In the light of the above circumstances, the Writ Petition is allowed. The notification dated 01-01-2005 issued by the 1st respondent corporation for bringing the house property of the petitioners for sale is quashed. The 1st respondent Corporation is not entitled to bring the house property of the petitioners for sale unless and until the Corporation establishes through appropriate forum that the petitioners voluntarily stood as sureties and they created the equitable mortgage by way of deposit of title deeds. In the event of either of the parties agitating before the appropriate forum, such forum should not get influenced by any of the observations made by this Court.

Justice G.YETHIRAJULU

DATE: 16-6-2005.

Dvs

Copies to:

1 The Branch Manager, AP State Financial Corporation, B-2A Industrial Estate, GNT Road, A.K.Nagar, Nellore-524 004.
2 The Managing Director, AP State Financial Corporation, Chirag Ali Lane, Hyderabad.
3. Two CD copies.

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO. 751 OF 2005

16th June, 2005